

Health Care Policy and Financing
Agency Number: UHA
Contract Routing #

CONTRACT

THIS CONTRACT, made this date, by and between the State of Colorado, for the use and benefit of the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203, hereinafter referred to as the Department, and Contractor_Legal_Name, located at Street_Address »City_State_Zip, hereinafter referred to as the Manufacturer.

WHEREAS, the State has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates in addition to the rebates received under the Centers for Medicare and Medicaid Services (CMS) Rebate Agreement, pursuant to 42 U.S.C. Section 1396r-8 for the benefit of Colorado Medicaid clients; and

WHEREAS, Manufacturer is willing to provide supplemental rebates to the Department based on the actual dispensing of Contractor Legal Name Covered Products under the State's Medicaid program.

NOW THEREFORE, subject to the terms, conditions, provisions and limitations contained in this contract, the Department and the Manufacturer agree as follows:

I. DEFINITIONS

The following terms as used in this Contract shall be construed and interpreted as follows unless the context otherwise expressly requires a different construction and interpretation:

Average Wholesale Price (AWP) shall mean the published price of the Covered Product by National Drug Code (NDC) as published by First Data Bank on the first day of the calendar quarter that corresponds to the calendar quarter for which the Department utilization data for the Covered Product is reported to Manufacturer.

Average Manufacturer Price (AMP) shall mean AMP as defined in 42 U.S.C. Section 1396r-8 and 42 C.F.R. Section 447.504.

Best Price shall mean Best Price as defined in 42 U.S.C. Section 1396r-8 and 42 C.F.R. Sections 447.505 and 447.508.

Centers for Medicare and Medicaid Services (CMS) shall mean the agency within the Department of Health and Human Services having the delegated authority to operate the Medicaid program.

CMS Rebate shall mean, with respect to the Covered Product, the quarterly payment by Manufacturer pursuant to Manufacturer's Medicaid Drug Rebate Agreement made in accordance with 42 U.S.C. Sections 1396r-8(c)(1) and 1396r-8(c)(3).

Competitive Product shall mean any **Specific Drug Class** that competes with Covered Product.

Covered Product shall mean the products as set forth in Attachment A.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall mean the statute set forth at 42 U.S.C. Section 1320d – 1320d-8.

Individually Identifiable Health Information shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103.

Ingredient Reimbursement shall mean, with respect to the Covered Product, the amount paid per Unit by Medicaid as reimbursement to Pharmacies, exclusive of the Pharmacy dispensing fee. For brand-name drugs, Ingredient Reimbursement is calculated as AWP-13.5%. For generic drugs, Ingredient Reimbursement is calculated as AWP-35%.

Medicaid shall mean the joint federal and state Medical Assistance Program as established and defined pursuant to 42 U.S.C. Section 1396, *et seq.*, that provides reimbursement for or coverage of drug products to Medicaid Clients.

Medicaid Client shall mean any person enrolled in the Colorado Medical Assistance Program and eligible to receive drug benefits under a fee-for-service arrangement.

Medicaid Drug Rebate Agreement shall mean the agreement in place between Manufacturer and the Secretary of Health and Human Services, pursuant to Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508).

Net Cost shall mean, with respect to the Covered Product, the drug Ingredient Reimbursement minus all applicable rebates per Unit.

Non-preferred Drug shall mean that the drug requires a prior authorization, as described in 10 C.C.R. 2505-10, Section 8.834, before being payable by the Medicaid Program.

Pharmacy shall mean a facility registered to dispense legend drugs and enrolled as a Colorado Medicaid provider.

Preferred Drug shall mean that the drug is payable by Medicaid without first obtaining a prior authorization.

Preferred Drug List shall mean a document listing various pharmaceutical products covered by Medicaid for the purpose of guiding the prescribing, dispensing and acquisition of pharmaceutical products. The Preferred Drug List shall not prevent clients from obtaining access to medically necessary drugs of manufacturers that participate in the Medicaid Drug Rebate Program.

Privacy Rule shall mean the regulations implementing HIPAA, 45 C.F.R. Parts 160 and 164.

Protected Health Information (PHI) shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103.

State Plan shall mean the document approved by CMS that defines how the State will operate its Medicaid program.

Supplemental Rebate shall mean an amount paid on a calendar quarter basis by Manufacturer to the Department for drug utilization under the Department's fee-for-service Medicaid program pursuant to this Contract.

Unit shall mean a single CMS Unit of Covered Product.

II. SCOPE OF WORK

A. Responsibilities of the Manufacturer

1. Supplemental Rebate Payment

- a. Manufacturer agrees to provide a Supplemental Rebate for each of its Covered Products that is paid by the Department and dispensed to Medicaid Clients by Pharmacies for each calendar quarter that Covered Products are designated as Preferred Drugs. Manufacturer shall pay to the Department the Supplemental Rebate amount in accordance with the formula set forth in Attachment B. The Department shall remit the appropriate share of its Supplemental Rebate payments made under the Contract to CMS as required under its approved State Plan.
- b. Manufacturer shall pay to the Department the Supplemental Rebate amount to which the Department is entitled in accordance with the formula set forth in Attachment B, within thirty-eight (38) days after receipt of the Department's invoice. The payment shall be in the form of a check made payable to Treasurer of the State of Colorado and sent to Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203, Attention: Drug Supplemental Rebate Department.
- c. Manufacturer shall have no obligation to pay Supplemental Rebate amounts for claims that are not submitted as part of an invoice in accordance with Section II.B.3. of this Contract. Manufacturer shall notify the Department or its designee of any incomplete submission within thirty-eight (38) days of Manufacturer's receipt of such submission.
- d. If either party discovers an error in the payment of Supplemental Rebates, that party shall notify the other of such error. The parties shall attempt to

reconcile all differences through discussion and negotiation. If that attempt fails, the parties will resolve their dispute in accordance with generally accepted applicable procedures utilized by the CMS Dispute Resolution Program. Any overpayment shall be deducted from subsequent Supplemental Rebates payable under this Contract. In the event that no subsequent Supplemental Rebates are payable, the Department will refund any such overpayment to Manufacturer within thirty (30) days of the parties' acknowledgement of the overpayment. Manufacturer will remit any underpayment to the Department within thirty (30) days of the parties' acknowledgement of such underpayment.

2. Discretion to Market

Nothing in this Contract shall be construed to prohibit Manufacturer from discontinuing production, marketing or distribution of any Covered Product or from transferring or licensing any Covered Product to a third party. It is understood that Manufacturer is liable for the payment of Supplemental Rebates only for Covered Products (as identified by the 11-digit NDC code) distributed (directly or through the wholesale channel) to Pharmacies and dispensed to Medicaid Clients. If Manufacturer elects to discontinue production, marketing or distribution of any Covered Product or to transfer or license any Covered Product to a third party, Manufacturer shall make every reasonable effort to notify the Department prior to such actions.

B. Responsibilities of the Department

1. Preferred Drug List

To be eligible for the Supplemental Rebates specified in Attachment B:

- a. The Department shall place and maintain Covered Product on the Preferred Drug List, it being agreed that drug utilization shall be eligible for the Supplemental Rebate only in quarters in which a Covered Product is listed on the Preferred Drug List; and
- b. The Department shall designate Covered Products as Preferred Drugs, unless otherwise mutually agreed upon in writing by the Department and Manufacturer; and
- c. Neither the Department nor its fiscal agent will in any way disadvantage a Covered Product through usages or restrictions not equally applied to other **Specific Drug Class** on the Preferred Drug List, unless otherwise mutually agreed upon in writing by the Department and Manufacturer.

2. Preferred Drug List Documentation and Publication

The Department shall communicate the inclusion of Covered Products on the Preferred Drug List to Medicaid providers through the standard notification process.

3. Invoicing

The Department shall invoice Manufacturer for Supplemental Rebates separately from CMS Rebates using the format set forth by CMS (Reconciliation of State Invoice format). The Department shall submit the Supplemental Rebate invoice to Manufacturer within sixty (60) days after the end of each calendar quarter in which the Department paid for the Covered Product subject to such Supplemental Rebate. Any amended invoice shall be submitted by the Department within fifteen months after the end of the calendar quarter in which the Department paid for the Covered Products.

4. Patient Information

The Department, its agents, employees and contractors shall not provide to Manufacturer any Individually Identifiable Health Information or Protected Health Information (“PHI”) or any other information prohibited or regulated by laws or regulations governing confidentiality of medical or other information.

5. Approval of Generic Equivalent

If during the duration of this Contract a generic equivalent of any Competitive Product should become available, the Department will allow Covered Products to remain Preferred Drugs so long as the Net Cost to the Department, as set forth on Attachment A, is not more than the lowest reimbursement cost as established by 10 C.C.R. 2505-10, Section 8.850.02, for a generic equivalent.

6. CMS Approval Contingency

The effectiveness of this Contract shall be contingent on CMS approval of the State Plan amendment which authorizes the Department to obtain Supplemental Rebates. Any amendment or modification to this Contract (including Attachments) requires the written consent of both parties and CMS authorization. A State Plan amendment will be submitted to obtain CMS authorization to make any changes to the Supplemental Rebate Contract.

7. Best Price Contingency

The effectiveness of this Contract shall be contingent on Manufacturer’s Best Price and AMP not being affected by State Supplemental Rebates.

8. Confidentiality

The Department shall not disclose information disclosed by the Manufacturer in connection with the Contract except as otherwise may be required by law and in accordance with the CMS Rebate Agreement between the Secretary of Health and Human Services and the drug manufacturers.

III. GENERAL PROVISIONS

A. Performance Period

The Contract shall be effective on date. The Contract performance contemplated herein shall commence as soon as practicable after the effective date of this Contract and shall extend through date.

B. Legal Authority

The Manufacturer warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Manufacturer to its terms. The person(s) executing this Contract on behalf of the Manufacturer warrant(s) that such person(s) have full authorization to execute this Contract.

C. HIPAA

In the event any PHI is disclosed pursuant to this Contract, the Department and the Manufacturer shall protect the privacy and provide for the security of such PHI in compliance with HIPAA, the Privacy Rule and other applicable laws, as amended.

D. Independent Contractor

Manufacturer shall perform its duties hereunder as an independent contractor and not as an employee. Neither Manufacturer nor any agent or employee of Manufacturer shall be or shall be deemed to be an agent or employee of the State. Manufacturer shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the State pursuant to this Contract. Manufacturer acknowledges that Manufacturer and its employees are not entitled to unemployment insurance benefits unless Manufacturer or a third party provides such coverage and that the State does not pay for or otherwise provide such coverage. Manufacturer shall have no authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Manufacturer shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

E. Termination for Convenience

Either party may terminate this Contract as of the end of any calendar quarter if a party determines that its purposes in contracting will no longer be served by continuation of the Contract. The terminating party shall effect such termination by giving written notice of termination to the other party and specifying the effective date thereof, at least 90 days before the effective date of such termination. The Manufacturer shall pay all Supplemental Rebate amounts due up to the date of Termination for Convenience.

F. Termination for Default/Cause

If, through any cause, the Manufacturer shall fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if the Manufacturer shall violate any of the covenants, agreements, or stipulations of this Contract, the Department shall thereupon have the right to terminate this Contract for cause by giving 10 days written notice to the Manufacturer.

G. Representatives and Notice

1. Representatives. For the purpose of this Contract, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

For the Department:

Tom Leahey
Name

Policy & Program Supervisor
Title

For the Manufacturer:

Contact Name
Name

Contact Title
Title

2. Authority. With respect to the representative of the Department, such individual shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise for the Department, except with respect to the execution of formal amendments to or termination of this Contract pursuant to paragraphs E. and F.
3. Notices. All notices required to be given by the parties hereunder shall be hand delivered or given by certified or registered mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

For the Department:

Individual's Name: Tom Leahey
Department and Division: Pharmacy Benefits Section
Address: Department of Health Care Policy and Financing
1570 Grant
Denver, CO 80203

For the Manufacturer:

Individual's Name: Contact Name
Company Name: Contractor Legal Name
Address: Street Address
City State Zip

H. Indemnification

Manufacturer shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Manufacturer, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract.

I. Assignment and Successors

The Manufacturer agrees not to assign rights or delegate duties under this Contract or subcontract any part of the performance required under the Contract without the express, written consent of the Department which shall not be unreasonably withheld. Except as herein otherwise provided, this Contract shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by Section 4-9-318, C.R.S., provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this Contract. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the Manufacturer assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

J. Force Majeure

Neither the Manufacturer nor the Department shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

K. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the Department and the Manufacturer. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Department and the Manufacturer that any such person or entity, other than the Department or the Manufacturer, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

L. Governmental Immunity

Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended. Any liability of the Department created under any other provision of this Contract, whether or not incorporated herein by reference, shall be controlled by, limited to, and otherwise modified so as to conform with, the above cited laws.

M. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

N. Waiver

The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

O. Entire Understanding

This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

P. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the Department as provided herein in the event of such failure to perform or comply by the Manufacturer.

Q. Modification and Amendment

This Contract is subject to such modifications as may be required by changes in federal or state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

R. Compliance With Applicable Law

The Manufacturer shall at all times during the execution of this Contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Contract. The Manufacturer also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal and/or state financial assistance, the Manufacturer makes the following assurances, upon which the Department relies.

1. The Manufacturer will not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this Contract.
2. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Manufacturer, or be subjected to any discrimination by the Manufacturer.

S. Licenses, Permits, and Responsibilities

Manufacturer certifies that, at the time of entering into this Contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this Contract. The Manufacturer warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this Contract, without reimbursement by the Department or other adjustment in contract price. Additionally, all employees of the Manufacturer performing services under this Contract shall hold the

required licenses or certification, if any, to perform their responsibilities. The Manufacturer further certifies that, if it is a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for the Manufacturer to properly perform this Contract, shall be grounds for termination of this Contract by the Department for default.

T. Governing Law

This Contract shall be governed by the laws of the State of Colorado. The parties agree that venue for any action related to performance of this Contract shall be in the City and County of Denver, Colorado.

U. Federal Funding

This Contract is subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

V. Maintenance of Records

The Manufacturer shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of programs or the delivery of services under this Contract, and shall maintain such records for a period of five (5) years after the date of termination of this Contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualification: If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the five (5) year period, or if audit findings have not been resolved after a five (5) year period, the materials shall be retained until the resolution of the audit findings.

W. Audit, Inspection of Records, and Monitoring

The Manufacturer shall permit the state, federal government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Manufacturer's records during the term of this Contract and for a period of three (3) years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof, or to evaluate the Manufacturer's performance hereunder. The Manufacturer shall also permit these same described entities to monitor all activities conducted by the Manufacturer pursuant to the terms of this Contract. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

X. Federal Audit Provisions

The Office of Management and Budget (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the Department when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

Y. Holdover Provision

In the event the Department desires to continue the services and a replacement contract has not been fully executed by the end date of this Contract, the Department, upon written notice to the Manufacturer, may unilaterally extend this Contract for a period of up to two (2) months. The Contract shall be extended under the same terms and conditions as the original Contract, including, but not limited to prices, rates and service delivery requirements. However, this extension shall terminate at the end of the two month period or when the replacement contract is signed.

Z. Conflict of Interest

1. The Manufacturer acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the Department. Thus, the Manufacturer agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Manufacturer's fully performing its obligations to the Department under the terms of this Contract, without the prior written approval of the Department.
2. The Manufacturer (and subcontractors or subgrantees permitted under the terms of this Contract) shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent of the Manufacturer, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - a. The employee, officer or agent,
 - b. Any member of the employee's immediate family,
 - c. The employee's partner; or
 - d. An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The Manufacturer's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Manufacturers, potential Manufacturers, or parties to sub-agreements.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

MANUFACTURER:

STATE OF COLORADO:

BILL RITTER, JR., GOVERNOR

Contractor Legal Name

Legal Name of Contracting Entity

By

Joan Henneberry, Executive Director
Department of Health Care Policy and
Financing

FEIN

Social Security Number or FEIN

Date

Signature of Authorized Officer

Print Name & Title of Authorized
Officer

CORPORATIONS:

(A corporate attestation is required)

(Place corporate seal here, if available)

Attest (Seal)

By

(Corporate Secretary or Equivalent, or
Town/City/County Clerk)

NET COST

ATTACHMENT A

Offer Number (x of y): _____

Covered Products

The products to which this Contract shall apply are the following:

NDC	Brand Name	Strength	Dosage Form	Unit of Measure	Package Description	Net Cost

Signature of authorized officer: _____ Date: _____

Title of authorized officer: _____

A separate Attachment A is required for each Supplemental Rebate offer. The Department requests that Manufacturers submit three (3) offers in the format listed below:

1. Net Cost as the single, exclusive Preferred Drug;
2. Net Cost as one of two Preferred Drugs; and
3. Net Cost as one of three or more Preferred Drugs.

ATTACHMENT B

Calculation of Supplemental Rebate Payment

The Supplemental Rebate per unit for each Covered Product shall be calculated each quarter as follows:

$$\begin{aligned} & \text{Ingredient Reimbursement}^1 \\ & - \text{Final CMS Rebate per Unit of Covered Product}^2 \\ & - \text{Net Cost}^3 \\ & = \text{Supplemental Rebate per Unit of Covered Product} \end{aligned}$$

The quarterly Supplemental Rebate Payment required in Section II.A.1 shall be calculated by multiplying the units of the Covered Product paid for by the Department and dispensed to Medicaid Clients by Pharmacies in the quarter by the Supplemental Rebate per Unit of Covered Product for that quarter.

¹Ingredient Reimbursement methodology for brand-name drugs is AWP-13.5% and for generic drugs is AWP-35%.

²Final CMS Rebate as calculated and provided to the Department by CMS for the calendar quarter for which the Supplemental Rebate applies.

³Net Cost for each Covered Product as specified in Attachment A.